

# **Industrial Commission's Advisory Committee On Workers' Compensation**

**Minutes  
February 13, 2007**

## **Members Present:**

Bob Shosted  
Dave Gribskov  
Steve Millard  
Max Sheils  
Dave Whaley  
Senator Andreason

Rod Fuger  
Steve Haase  
Linda Sams  
Rian Van Leuven  
Kriste Crane  
John Greenfield

## **Members Absent:**

Glenna Christensen  
James Arnold

## **Minutes:**

After review, Max Sheils moved to approve the Minutes of November 14, 2006. Dave Gribskov seconded, and the motion carried.

## **Proposed Statute Changes:**

Chapter 11, Title 72, Idaho Code – Fraternal Order of Police – Paul Jagosh, spokesman for the Fraternal Order of Police, presented draft legislation that would allow police officers injured in the line of duty to collect one hundred percent of their base pay salary while on temporary disability. Mr. Jagosh reported that an increase in certain fines is proposed to generate enough money to maintain such a fund. He indicated that the fund would be administered by the Industrial Commission. This legislation would create uniformity of benefits for police officers throughout the state. This fund would not pay injured workers' directly, but would reimburse employers for the additional benefits paid.

It was suggested that instead of proposing this legislation, the Police Association could establish and administer this fund, which would largely reduce the overhead of running this type of program. Director Mindy Montgomery stated that if the Industrial Commission's Crime Victim's Compensation Program is charged with administering this fund, the Commission would need another position included in the legislation as the Crime Victim's program is to their limit with their workload. Mr. Jagosh indicated that if the legislation passes the Industrial Commission would determine distribution of funds and would need to write the rules. A few Advisory Committee members expressed concern that other groups, such as firefighters and teachers, may decide they want to establish the same type of fund.

After much discussion, the Advisory Committee members could not reach consensus on the proposed legislation. The Advisory Committee members suggested that if the legislation does not pass, Mr. Jagosh was welcome to bring the proposed legislation back to the Advisory Committee and a subcommittee consisting of Max Sheils, Rod Fuger, John Greenfield, Bob

Shosted, Dave Whaley, and Steve Haase would work with the Fraternal Order of Police on their proposed legislation.

### **Subcommittee Reports:**

Uninsured Employers' Fund - (Chair, John Greenfield, James Arnold, Steve Millard, Dave Whaley, and Ex-Officio members Alan Gardner, Lynn Luker, Jon Bauman, Blair Jaynes, Chisti Simon, and Jack Barrett) Mr. Greenfield reported that the Uninsured Employer's Fund (UEF) subcommittee recently met and contacted Keith Messmer with the Montana Uninsured Employer's Fund to discuss how Montana's UEF was set up and how it is administered. Jack Barrett has already drafted legislation that the subcommittee will review and discuss at the next subcommittee meeting. The draft should be ready for presentation to the Advisory Committee at the next meeting. Mr. Greenfield indicated that the proposed uninsured employer's fund legislation would not change the current workers' compensation law, but would add another chapter to the law. It is the intent of the subcommittee that the Industrial Commission administer this fund.

Public Comment – Jack Barrett reported that the proposed Uninsured Employers' Fund statute would be quite a large addition to the Workers' Compensation Law. He stated that about fifty percent of the states have established these funds and strongly suggests that this be set up in Idaho as well. According to Mr. Barrett, increased penalties collected by the Industrial Commission would be a large part of the UEF's funding. Most other states have access to additional funding sources other than penalties to maintain their funds. If Idaho relies strictly on penalties to fund this program, it may be necessary to reduce benefits when the Uninsured Employer's Fund drops below a certain dollar amount.

Commissioner Maynard reported that New Mexico and Arizona collect a small amount from employees (based on hours worked) matched by employers to fund their UEF. These states also cap the amount available per claim. Commissioner Maynard suggested that type of funding might be something Idaho should look into.

According to Mr. Greenfield, the subcommittee will reconvene a couple of times before the next Advisory Committee meeting and have draft legislation ready for the members review.

Nominations – Change of Charter - (Max Sheils, Chair, David Whaley, Glenna Christensen, Rod Fuger, and Linda Sams) Subcommittee Chair Max Sheils reported that the subcommittee was formed to discuss changing the Advisory Committee charter in the following manner:

1. Add a member to the Advisory Committee to represent the interests of physicians.
2. Consider term limits for members of the Advisory Committee.
3. Change voting for new members by Advisory Committee members to appointment by the Commissioners of new members from a list recommended by the Nominations Subcommittee.

Mr. Sheils stated that the subcommittee met and has the following recommendations:

1. Consensus of the subcommittee was to amend the charter to include two persons representing the interests of medical providers, one primarily representing the interests of physicians and one primarily representing the interests of hospitals.
2. Consensus of the subcommittee was that mandatory term limits should not be imposed, as some classes of general membership require "historical knowledge". Also, at times it is difficult to find replacements and a member should not be ruled out by term limits.
3. The consensus of the subcommittee also included no change to the Charter regarding how members are elected.

Chairman Van Leuven asked for a consensus on all three recommendations presented by the Nominations Subcommittee. Consensus of the Advisory Committee was to approve all three recommendations of the Nominations Subcommittee.

### **Consideration of Issues:**

#### **Legislative Update:**

Employer's Reports – Scott McDougall, Benefits Administration Manager, reported that IDAPA 17.02.06 regarding timelines and requirements for submitting employer's reports was passed by both the House and the Senate.

Medical Fees 17.02.08 – Commissioner Limbaugh reported that IDAPA 17.02.08 was passed by the legislature without the table of conversion factors. The Commission is currently working on a new table of conversion factors that will be submitted as a temporary rule effective simultaneously with the pending rule.

Idaho Code 72-713 – Max Sheils reported that this statute change allowing the Commission to send hearing notices by regular first class mail should pass the House and Senate.

SB1014 Amending §72-1023- Blair Jaynes, Deputy Attorney General for the Commission, reported that this legislation was held in Committee. Its purpose was to relieve the Crime Victim's program from paying a proportional share of attorney fees where a claimant institutes the action and recovers under its subrogation interest.

SB1015 Amending §19-2304 –Mr. Jaynes reported that this bill to clarify that the Crime Victims' compensation account is entitled to restitution for payments made for medical and forensic sexual assault exams as well as all other payments made to or on behalf of victims' of crimes has passed the Senate unanimously and will now go before the House.

Mr. Jaynes discussed two other bills, SB1023, the "retaliation bill", prohibiting employers from firing employees because they filed a worker's compensation claim, and HO227 that would exempt certain employers from mandatory workers' compensation coverage when employment is for religious purposes.

Public Comment - Jack Barrett stated that he did some research regarding the language contained in the retaliation bill and found that Idaho law already prohibits the issues contained in the bill.

### **Industrial Commission Report**

Industrial Commission Director Mindy Montgomery introduced Patti Jarossy as the Commission's new Medical Fee Analyst. Ms. Montgomery also reported that the Commission's Request for Proposal for a contract person or company to review the Commission's medical fee schedule and to make recommendations for pharmaceutical, durable medical goods, and hospital reimbursements will close this week.

Ms. Montgomery informed the members that the Commission has selected a new building to relocate our office, which is just off Park Center behind the Ram restaurant. The Commission will be the only tenant and there is plenty of parking. The Director indicated that the leasing agent suggested a possible move-in date of December 2007.

Ms. Montgomery reported that the Boise Rehabilitation Department will be moving into a new building on Emerald Street sometime in March.

Topics for discussion at the next meeting:

- Max Sheils report on the Sun Valley Conference
- John Greenfield, Subcommittee Report on the Uninsured Employer's Fund
- Recap of Legislation
- Attorney Fee Regulation (litigated cases after 10 years attorney fees are decreased by 50%) – John Greenfield

Chairman Van Leuven will look into the frequency of IME physicians who are placing more rigid restrictions on employees than their treating physicians resulting in employees being taken back off work, and if there appears to be a widespread problem, may want it on the next agenda.

Date for next meeting was scheduled for May 15, 2007.

There being no further business, the meeting adjourned.